



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

The position of the defendant should be the moral equivalent of that of a wilful wrongdoer if the rule of policy denying relief to a negligent plaintiff is to become non-effective.

EFFECT UPON FORECLOSURE SALE OF THE DEATH OF MORTGAGOR BEFORE CONFIRMATION. A common statute provides that upon default of payment by the mortgagor, the mortgagee may file a petition or commence *scire facias* proceedings for foreclosing the equity of redemption. By the decree or judgment thereunder a new date is fixed on or before which the mortgagor may redeem, and at which, if the mortgagor has not redeemed, the realty will be sold by an officer of the court and the proceeds applied to the payment of the debt. In some states, where foreclosure is accomplished by the sale under *scire facias* proceedings, no confirmation is required. More commonly, however, confirmation is necessary. In case the mortgagor dies during these proceedings, the validity of the foreclosure has been recently questioned. *Effect upon a Foreclosure Sale of the Death of the Mortgagor before Confirmation*, by Edward M. Winston, 58 Central L. J. 103 (Feb. 5, 1904). Until the confirmation of the sale, it is contended, the mortgagor's interest continues. Since an estate will accordingly pass to the heir on the death of the mortgagor, Mr. Winston concludes that the foreclosure is invalid, unless the heir is made a party to the proceedings. The fact that a contrary rule has been generally adopted and the reason for its adoption are ignored by Mr. Winston.

The essential nature of foreclosure proceedings requires that the holder of the equity of redemption be a party to the decree. If before the decree is rendered, therefore, the mortgagor dies and proceedings are not revived against the heir, the decree and any sale thereunder are plainly void. *Hunt v. Acre*, 28 Ala. 580. If, however, the mortgagor dies after the decree is rendered, it has been held that reviver against his successor is not necessary to the validity of subsequent proceedings. *Hays v. Thomae*, 56 N. Y. 521; *Trenholm v. Wilson*, 13 S. C. 174. Support for this view is sought in the rule that a decree obtained in the lifetime of the defendant-party may be enrolled after his death. See *Harrison v. Simons*, 3 Edw. (N. Y.) 394, 395. This analogy between enrollment and the confirmation of a foreclosure sale, it is submitted, is fallacious. Enrollment is a non-discretionary and ministerial act. *Sheffield v. Duchess of Buckingham*, West 673. The confirmation of the foreclosure sale by the court, on the other hand, is the definitive act in the foreclosure proceedings. The foreclosure sale passes no title to the purchaser. *Woehler v. Endter*, 46 Wis. 301. Only upon the confirmation of the sale, which rests entirely within the discretion of the court, does title pass to the purchaser. *Brown v. Isbell*, 11 Ala. 1009. When the equity of redemption is finally foreclosed, the holder, it would seem, should be before the court. One jurisdiction has already held that, upon the death of the mortgagor before the foreclosure sale, reviver is necessary against his successor. *Glenn v. Clapp*, 11 G. & J. (Md.) 1. Upon principle it seems sound, as Mr. Winston contends, to make reviver of proceedings against the successor essential to the validity of the foreclosure, when the mortgagor dies at any time before the confirmation.

MALICIOUS TORTS.—The attempt is made in a suggestive and noteworthy article of recent date, remarkable for its keen analysis and its accuracy of expression, to separate and distinguish the different kinds of questions that may arise in a case of malicious tort. *Malicious Torts*, by Henry T. Terry, 20 L. Quart. Rev. 10 (Jan., 1904). The author begins with an elaborately wrought discrimination between the various kinds of rights and duties recognized in the law. To each legal right corresponds a particular kind of legal duty. When a breach of the corresponding duty results proximately in a violation of a right, a

tort action arises. To the more tangible and definite rights, which the author styles "distinct," including, for example, rights of person and property, correspond duties peremptory in character, or "duties of reasonableness" or "duties of mere intention." But to the vaguer right which Mr. Terry terms the "right of pecuniary condition" — which seems to be "the holding of value or purchasing power," and which is distinguished from property in that it need not be a right in specific things at all, — to this right the only corresponding duty is to abstain from malicious acts. That there is such a duty he thinks perfectly clear. But to this duty there are exceptions so numerous as to destroy the rule in most cases where the act cannot be considered wrongful in some collateral aspect. Thus, the rule does not apply to acts done in the exercise of "distinct" rights, or in the enforcement of a contract, or of a right of action. And the questions raised by such cases as *Allen v. Flood*, — whether there is a duty not to maliciously persuade a person to break his contract with the plaintiff, or to refuse to enter into relations with him, and whether a duty is broken when such acts are done by a combination, if not when done by a single individual — are questions in each case of admitting exceptions to the general rule; and they depend on considerations of justice and policy, not on any theory of malice. The first question to be asked in such a case is whether any right has been violated; and if so, whether it is not a right to which a duty involving no more than mere intention corresponds. If the first of these questions is answered in the negative, or the second in the affirmative, obviously any discussion of malice is irrelevant and confusing.

It may be doubted whether Mr. Terry has entirely cleared up the confusion in the law on this subject, of which he complains. However sound his analysis, it is not simple. There is ample room, it would seem, for further confusion in drawing the line he suggests between "distinct" and "vague" rights; and, after all is said, he finds the test to be that which has consistently been applied, justice and policy.

ACTS OF CONGRESS DECLARED UNCONSTITUTIONAL BY THE SUPREME COURT.
Blackburn Esterline. 38 Am. L. Rev. 21.

BLOCKADE AND CONTRABAND. *Charles L. Nordon*. 29 Law Mag. & Rev. 179.

CIRCUMSTANTIAL OR PRESUMPTIVE EVIDENCE. *N. W. Sibley and W. Madden*. 26 Law Stud. J. 31.

COURT OF LAND REGISTRATION. *Charles Thorton Davis*. 13 Yale L. J. 182.

COVENANTS FOR QUIET ENJOYMENT IN A LEASE. *Charles Thwaites*. 26 Law Stud. J. 30.

DOCTRINE OF RES GESTÆ IN THE LAW OF EVIDENCE. *N. W. Sibley*. 20 L. Quart. Rev. 85.

EFFECT UPON A FORECLOSURE SALE OF THE DEATH OF THE MORTGAGOR BEFORE CONFIRMATION. *Edward M. Winston*. 58 Central L. J. 103. See *supra*.

FORFEITURE OF LIFE INSURANCE FOR NON-PAYMENT OF PREMIUM. *Charles W. Tillet*. 1 North Carolina J. of L. 67.

FREehold ESTATES. *P. S. Hannagan*. 19 Chic. L. J. 767.

INCOMPETENCY TO CONTRACT AND ITS EFFECTS ACCORDING TO THE LAW OF BRITISH INDIA. *H. H. Shephard*. 20 L. Quart. Rev. 81.

IS THE SURROGATE COURT FULFILLING ITS PURPOSE? *Louis W. Marcus*. 66 Albany L. J. 40.

JAMES WILSON AS A JURIST. *James Oscar Pierce*. 38 Am. L. Rev. 44.

JUDICIAL HISTORY OF INDIVIDUAL LIBERTY. *Van Vechten Veeder*. 16 Green Bag 101.

JURISDICTION OVER FOREIGN SHIPS IN TERRITORIAL WATERS. *Charles Noble Gregory*. 2 Mich. L. Rev. 333.

LAW REPORTING: A REPORTER'S VIEW. *Frank Evans*. 29 Law Mag. & Rev. 88.

LEGAL EDUCATION IN GERMANY. *Gustav Schirrmeister*. 29 Law Mag. & Rev. 129.

LIABILITY OF CITY FOR FIRE CAUSED BY FAILURE TO ENFORCE ORDINANCE. *Anon.* 10 Case & Com. 97.

LIABILITY OF GOVERNOR, MAYOR, OR OTHER EXECUTIVE OFFICIAL FOR THE NEGLIGENCE OF HIS APPOINTEES. *Anon.* 58 Central L. J. 101.

- LIABILITY OF SERVANTS TO THIRD PERSONS FOR NEGLIGENCE. *Anon.* 10 Case & Com. 98.
- LIFE INSURANCE — EFFECT OF INCONTESTABLE CLAUSE IN CASE OF SUICIDE. *Anon.* 58 Central L. J. 128.
- MALICIOUS TORTS. *Henry T. Terry.* 20 L. Quart. Rev. 10. See *supra*.
- NEED OF A NATIONAL INCORPORATION LAW. *H. L. Wilgus.* 2 Mich. L. Rev. 358.
- NEGLECT OF RAILWAY COMPANIES IN CANADA. *C. H. Masters.* 40 Can. L. J. 60.
- NEGOTIABLE INSTRUMENTS LAW. *John Lawrence Farrel.* 5 Brief 1.
- NEWSPAPERS AND LABOUR. *Frank S. Hodgins.* Discussing *interim* injunctions against publishing notices of strikes containing warnings to labourers to keep away. 24 Can. L. T. 40.
- NEW YORK ANTI-TRUST ACT. *Thaddeus D. Kenneson.* Arguing that the only effect of the Act is to make illegal those contracts which before were unenforceable on grounds of public policy. 4 Columbia L. Rev. 83.
- NEW YORK CODE OF EVIDENCE. Part II. *David Dudley Field and William Rumsey.* A proposed but unadopted code. 5 Brief 35.
- ORIGIN AND HISTORY OF THE CHANCERY DIVISION. *Erasmus Darwin Parker.* 29 Law Mag. & Rev. 164.
- PUBLIC RIGHTS IN THE SEASHORE. *Anon.* 58 Justice of P. 63.
- RECENT WORKMEN'S COMPENSATION ACT. *Anon.* Summary of recent English decisions. 116 Law T. 261, 312.
- RIGHT OF ACCUSED TO RESIST EXTRADITION BY PROVING ALIBI. *Anon.* 58 Central L. J. 121. See *supra*.
- RIGHT OF THE SUBJECT TO PERSONAL LIBERTY IN ENGLISH LAW. *S. P. J. Merlin.* 29 Law Mag. & Rev. 194.
- ROMAN-DUTCH LAW IN SOUTH AFRICA. *W. R. Bisschop.* 20 L. Quart. Rev. 41.
- ROMAN LAW IN ENGLISH DECISIONS. *James Williams.* 29 Law Mag. & Rev. 139.
- SCHEMES TO CONTROL THE MARKET. *Bruce Wyman.* 16 Green Bag 80.
- SOME REMINISCENCES OF CRIMINAL LAW. *George S. Holmsted.* 3 Can. L. Rev. 20.
- STATUTORY REGULATION OF EMPLOYMENTS OF WOMEN. *Andrew Bruce.* 58 Central L. J. 123.
- STOCK EXCHANGE "DIFFERENCES" AND THE GAMING LAWS. *W. Strachan.* 20 L. Quart. Rev. 53.
- TACKING AS AGAINST A SURETY. *Anon.* 38 Irish L. T. 65.
- THE ADVOCATE. *N. H. Loomis.* Discussing the art of presenting cases to the jury. 5 Brief 19.
- THE BREAKDOWN OF THE LAND TRANSFER ACTS SYSTEM IN ENGLAND. *J. L. Hogg.* 20 L. Quart. Rev. 74.
- THE NATURE OF JURISPRUDENCE AND OF THE LAW. A STUDY IN APPLIED LOGIC. *George H. Smith.* 38 Am. L. Rev. 68.
- THE NEXT STEP IN THE EVOLUTION OF PUNISHMENT. *Whitehead Klutz.* 1 North Carolina J. of L. 56.
- THEORY AND THE LAW OF WATER WORKS SECURITIES. *Ambrose Tighe.* 13 Yale L. J. 165.
- THEORY OF EVIDENCE. *Henry T. Terry.* 13 Yale L. J. 190.
- TRADE REGULATIONS IN THE MIDDLE AGES. *Percy Houghton Brown.* 29 Law Mag. & Rev. 148.
- TREASURE TROVE AND THE BRITISH MUSEUM. *William Martin.* 20 L. Quart. Rev. 27.
- WANTONNESS IN PERSONAL INJURY CASES. *Paul Speake.* 12 Am. Lawyer 4. See *supra*.
- WHAT IS THE COMMON LAW? *John S. Ewart.* Discussing the existence of the Law Merchant as apart from the Common Law. 4 Columbia L. Rev. 96.